

[DISCUSSION DRAFT]

107TH CONGRESS
1ST SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. KIND introduced the following bill; which was referred to the Committee
on _____

A BILL

To reform the Army Corps of Engineers.

1 *Be it enacted by the Senate and House of Representa-*

2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the

5 “Corps of Engineers Reform Act of 2001”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

Sec. 2. Findings and purposes.

Sec. 3. Secretary defined.

TITLE I—PROJECT PLANNING REFORM

- Sec. 101. Principles and guidelines.
- Sec. 102. Stakeholder advisory committees.
- Sec. 103. Independent review.
- Sec. 104. Public access to information.
- Sec. 105. Benefit-cost analysis for flood damage reduction projects.
- Sec. 106. Project criteria.

TITLE II—MITIGATION

- Sec. 201. Full mitigation.
- Sec. 202. Concurrent mitigation.
- Sec. 203. Mitigation tracking system.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—Congress finds the following:

3 (1) The Army Corps of Engineers is the pri-
4 mary Federal agency responsible for developing and
5 managing the Nation's harbors, waterways, shore-
6 lines, and water resources.

7 (2) Scarce Federal resources require more effi-
8 cient use of Corps of Engineers funding and greater
9 oversight of Corps of Engineers analyses.

10 (3) Demand for recreation, clean water, and
11 healthy wildlife habitat must be reflected in the
12 Corps of Engineers project planning process.

13 (4) The social and environmental impacts of
14 dams, levees, shoreline stabilization structures, and
15 other projects must be adequately considered and
16 fully mitigated.

17 (5) Affected interests must play a larger role in
18 the oversight of Corps of Engineers project develop-
19 ment.

1 (b) PURPOSES.—The purposes of this Act are as fol-
2 lows:

3 (1) To ensure that the Nation's water resources
4 investments are economically justified and enhance
5 the environment.

6 (2) To provide independent review of Corps of
7 Engineers feasibility studies.

8 (3) To ensure that mitigation for Corps of En-
9 gineers projects is successful and cost-effective.

10 (4) To enhance the involvement of affected in-
11 terests in Corps of Engineers feasibility studies.

12 (5) To revise Corps of Engineers planning prin-
13 ciples to meet the economic and environmental needs
14 of riverside and coastal communities.

15 (6) To ensure that environmental analyses be
16 considered as co-equal to economic analyses in the
17 assessment of Corps of Engineers projects, recog-
18 nizing the need for sound science in the evaluation
19 of the impacts on the health of aquatic ecosystems.

20 (7) To ensure that the Corps of Engineers is
21 making appropriate, up-to-date calculations in con-
22 ducting cost-benefit analyses of Corps of Engineers
23 projects.

1 **SEC. 3. SECRETARY DEFINED.**

2 In this Act, the term “Secretary” means the Sec-
3 retary of the Army.

4 **TITLE I—PROJECT PLANNING**
5 **REFORM**

6 **SEC. 101. PRINCIPLES AND GUIDELINES.**

7 Section 209 of the Flood Control Act of 1970 (42
8 U.S.C. 1962–2) is amended to read as follows:

9 **“SEC. 209. CONGRESSIONAL STATEMENT OF OBJECTIVES.**

10 “(a) IN GENERAL.—It is the intent of Congress that
11 economic development and environmental protection and
12 restoration be co-equal goals of water resources planning
13 and development.

14 “(b) REVISION OF PRINCIPLES AND GUIDELINES.—
15 Not later than 1 year after the date of enactment of the
16 Corps of Engineers Reform Act of 2001, the Secretary
17 shall revise the principles and guidelines of the Corps of
18 Engineers for water resources projects—

19 “(1) to provide for the consideration of ecologi-
20 cal restoration costs under Corps of Engineers eco-
21 nomic models;

22 “(2) to incorporate new techniques in risk and
23 uncertainty analysis;

24 “(3) to eliminate biases and disincentives for
25 nonstructural flood damage reduction projects;

26 “(4) to incorporate new analytical techniques;

1 “(5) to encourage, to the maximum extent prac-
2 ticable, the restoration of aquatic ecosystems; and

3 “(6) to ensure that water resources projects are
4 justified by benefits that accrue to the public at
5 large and not to a limited number of private busi-
6 nesses.

7 “(c) UPDATE OF GUIDANCE.—The Secretary shall
8 update the Guidance for Conducting Civil Works Planning
9 Studies (ER 1105–2–100) to comply with this section.”.

10 **SEC. 102. STAKEHOLDER ADVISORY COMMITTEES.**

11 (a) IN GENERAL.—The Secretary shall establish for
12 each water resources project that is authorized or substan-
13 tially modified after the date of enactment of this Act a
14 stakeholder advisory committee to assist the Secretary
15 with the development of feasibility studies, general re-
16 evaluation studies, and environmental impact statements
17 for the project.

18 (b) TIMING OF REVIEWS.—An advisory committee
19 established for a project may conduct a review of the
20 project at each stage of project development beginning
21 with the initiation of a draft feasibility study and ending
22 with the issuance of a final environmental impact state-
23 ment.

24 (c) MEMBERSHIP.—An advisory committee estab-
25 lished for a project shall be composed of members who

1 represent a balance of the social, economic, and environ-
2 mental interests in the project.

3 (d) **ROLE.**—An advisory committee established for a
4 project shall advise the Secretary but shall not be required
5 to make a formal recommendation.

6 (e) **APPLICABILITY OF FEDERAL ADVISORY COM-**
7 **MITTEE ACT.**—The Federal Advisory Committee Act (5
8 U.S.C. App.) shall apply to an advisory committee estab-
9 lished under this section.

10 **SEC. 103. INDEPENDENT REVIEW.**

11 (a) **PROJECTS SUBJECT TO INDEPENDENT RE-**
12 **VIEW.**—

13 (1) **IN GENERAL.**—The Secretary shall ensure
14 that feasibility reports, general reevaluation studies,
15 and environmental impact statements for each water
16 resources project described in paragraph (2) are
17 subject to review by an independent panel of experts
18 established under this section.

19 (2) **PROJECTS SUBJECT TO REVIEW.**—A project
20 shall be subject to review under paragraph (1) if—

21 (A) the project has an estimated total cost
22 of more than \$25,000,000, including mitigation
23 costs;

1 (B) the Governor of an affected State re-
2 quests the establishment of an independent
3 panel of experts for the project;

4 (C) the Director of the United States Fish
5 and Wildlife Service determines that the project
6 is likely to have significant adverse impacts on
7 fish or wildlife after implementation of proposed
8 mitigation plans; or

9 (C) if the Secretary determines that the
10 project is controversial under paragraph (3).

11 (3) CONTROVERSIAL PROJECTS.—

12 (A) IN GENERAL.—The Secretary shall de-
13 termine that a project is controversial under
14 paragraph (2)(C) if the Secretary finds that—

15 (i) there is a significant public dispute
16 as to the size, nature, or effects of the
17 project; or

18 (ii) there is a significant public dis-
19 pute as to the economic or environmental
20 costs or benefits of the project.

21 (B) WRITTEN REQUESTS.—The Secretary
22 shall determine whether or not a project is con-
23 troversial upon receipt of a written request of
24 an interested party or on the initiative of the
25 Secretary.

1 (4) AFFECTED STATE DEFINED.—In paragraph
2 (2)(B), the term “affected State” means a State
3 that is at least partially within the drainage basin in
4 which the project is located and would be economi-
5 cally or environmentally affected as a consequence of
6 the project.

7 (b) OFFICE OF INDEPENDENT REVIEW.—

8 (1) ESTABLISHMENT.—There is established in
9 the Office of the Assistant Secretary of Civil Works
10 an Office of Independent Review (in this section re-
11 ferred to as the “Office”).

12 (2) DIRECTOR.—

13 (A) APPOINTMENT.—The head of the Of-
14 fice shall be the Director of the Office of Inde-
15 pendent Review (in this section referred to as
16 the “Director”), who shall be appointed by the
17 Secretary for a term of 3 years.

18 (B) QUALIFICATIONS.—The Secretary
19 shall select the Director from among individuals
20 who are distinguished scholars. In making the
21 selection, the Secretary shall consider any rec-
22 ommendations made by the Inspector General
23 of the Army.

24 (C) LIMITATION ON APPOINTMENTS.—The
25 Secretary shall not appoint an individual to

1 serve as the Director if the individual has a fi-
2 nancial or close professional association with
3 any organization or group with a strong finan-
4 cial or organizational interest in an ongoing
5 water resources project.

6 (D) TERMS.—An individual may not serve
7 for more than 1 term as the Director.

8 (3) DUTIES.—The Director shall establish a
9 panel of experts to review each project subject to re-
10 view under subsection (a).

11 (c) ESTABLISHMENT OF PANELS.—

12 (1) IN GENERAL.—As soon as practicable after
13 the Secretary selects a preferred alternative for a
14 project subject to review under subsection (a), the
15 Director shall establish a panel of experts to review
16 the project.

17 (2) MEMBERSHIP.—A panel of experts estab-
18 lished by the Director for a project shall be com-
19 posed of not less than 5 and not more than 9 inde-
20 pendent experts who represent a balance of areas of
21 expertise, including biologists, engineers, and econo-
22 mists.

23 (3) LIMITATION ON APPOINTMENTS.—The Di-
24 rector shall not appoint an individual to serve on a
25 panel of experts for a project if the individual has

1 a financial or close professional association with any
2 organization or group with a strong financial or or-
3 ganizational interest in the project.

4 (4) CONSULTATION.—The Director shall con-
5 sult with the National Academy of Sciences in devel-
6 oping lists of individuals to serve on panels of ex-
7 perts under this section.

8 (5) COMPENSATION.—An individual serving on
9 a panel of experts under this section shall be com-
10 pensated at a rate of pay to be determined by the
11 Secretary.

12 (6) TRAVEL EXPENSES.—An individual serving
13 on a panel of experts under this section shall receive
14 travel expenses, including per diem in lieu of subsist-
15 ence, in accordance with sections 5702 and 5703 of
16 title 5, United States Code.

17 (d) DUTIES OF PANELS.—A panel of experts estab-
18 lished for a project under this section shall—

19 (1) review each feasibility study, general re-
20 evaluation study, and environmental impact state-
21 ment prepared for the project;

22 (2) assess the adequacy of the economic models
23 used by the Secretary in reviewing the project to en-
24 sure that—

1 (A) multiple methods of economic analysis
2 have been used; and

3 (B) any regional effects on navigation sys-
4 tems have been examined;

5 (3) receive written and oral comments of a
6 technical nature concerning the project from the
7 public; and

8 (4) submit to the Secretary a report containing
9 the panel's economic, engineering, and environ-
10 mental analysis of the project, including the panel's
11 conclusions on the feasibility report, with particular
12 emphasis on areas of public controversy.

13 (e) DURATION OF PROJECT REVIEWS.—A panel of
14 experts shall complete its review of a project under this
15 section not later than 180 days after the date of establish-
16 ment of the panel.

17 (f) RECOMMENDATIONS OF PANEL.—

18 (1) CONSIDERATION BY SECRETARY.—After re-
19 ceiving a report on a project from a panel of experts
20 under this section and before entering a final record
21 of decision for the project, the Secretary shall con-
22 sider any recommendations contained in the report
23 and prepare a written explanation for any rec-
24 ommendations not adopted.

1 (2) PUBLIC REVIEW; TRANSMITTAL TO CON-
2 GRESS.—After receiving a report on a project from
3 a panel of experts under this section, the Secretary
4 shall—

5 (A) make a copy of the report (and any
6 written explanation of the Secretary on rec-
7 ommendations contained in the report) available
8 for public review under section 104; and

9 (B) include a copy of the report (and any
10 such written explanation) in any report trans-
11 mitted to Congress concerning the project.

12 (g) COSTS.—The cost of conducting a review of a
13 project under this section shall not exceed \$250,000 and
14 shall be considered as part of the total cost of the project;
15 except that the Secretary may waive such limitation in
16 cases that the Secretary determines appropriate.

17 **SEC. 104. PUBLIC ACCESS TO INFORMATION.**

18 (a) IN GENERAL.—The Secretary shall ensure that
19 information related to the analysis of a water resources
20 project by the Corps of Engineers, including all supporting
21 data and information that the Corps of Engineers has con-
22 sidered in its analysis, is made available to any person
23 upon request and to the public on the Internet.

24 (b) TYPES OF INFORMATION.—Information about a
25 water resources project to be made available under sub-

1 section (a) shall include any information that had been
2 made available to the project sponsor and all data used
3 by the Corps of Engineers in its justification and analysis
4 of the project.

5 (c) EXCEPTION FOR TRADE SECRETS.—

6 (1) IN GENERAL.—The Secretary shall not
7 make information available under subsection (a) that
8 the Secretary determines to be a trade secret of the
9 person who supplied the information to the Corps of
10 Engineers.

11 (2) CRITERIA FOR TRADE SECRETS.—The Sec-
12 retary shall consider information to be a trade secret
13 only if—

14 (A) the person who supplied the informa-
15 tion to the Corps of Engineers has not disclosed
16 the information to any person other than (i) an
17 officer or employee of the United States or a
18 State or local government, (ii) an employee of
19 such person, or (iii) a person who is bound by
20 a confidentiality agreement, and such person
21 has taken reasonable measures to protect the
22 confidentiality of the information and intends to
23 continue to take such measures;

24 (B) the information is not required to be
25 disclosed, or otherwise made available, to the

1 public under any other Federal or State law;
2 and

3 (C) disclosure of the information is likely
4 to cause substantial harm to the competitive po-
5 sition of such person.

6 **SEC. 105. BENEFIT-COST ANALYSIS FOR FLOOD DAMAGE**
7 **REDUCTION PROJECTS.**

8 Section 308(a) of the Water Resources Development
9 Act of 1990 (33 U.S.C. 2318(a)) is amended—

10 (1) by striking “and” at the end of paragraph
11 (1)(B);

12 (2) by striking the period at the end of para-
13 graph (2) and inserting “; and”; and

14 (3) by adding at the end the following:

15 “(3) any projected benefit attributable to in-
16 creases in the value of privately owned property, in-
17 creases in the quantity of privately owned property,
18 or increases in the value of privately owned services
19 arising from the draining, reduction, or elimination
20 of wetlands.”.

21 **SEC. 106. PROJECT CRITERIA.**

22 After the date of enactment of this Act, the Secretary
23 shall not submit to Congress any proposal to authorize or
24 substantially modify a water resources project unless the

1 proposal contains a certification by the Secretary that the
2 project will not adversely affect—

3 (1) the natural hydrologic patterns of aquatic
4 ecosystems; or

5 (2) the value or native diversity of aquatic eco-
6 systems.

7 **TITLE II—MITIGATION**

8 **SEC. 201. FULL MITIGATION.**

9 Section 906(d) of the Water Resources Development
10 Act of 1986 (33 U.S.C. 2283(d)) is amended—

11 (1) in the first sentence of paragraph (1) by in-
12 serting “fully” before “mitigate”; and

13 (2) by adding at the end the following:

14 “(3) STANDARDS FOR MITIGATION.—To miti-
15 gate losses to fish and wildlife resulting from a
16 water resources project, the Secretary, at a min-
17 imum, shall acquire and restore an acre of habitat
18 to replace each acre of habitat negatively impacted
19 by the project. The mitigation plan shall include a
20 detailed and specific plan to monitor mitigation im-
21 plementation and success.

22 “(4) DESIGN OF MITIGATION PROJECTS.—The
23 Secretary shall design mitigation projects to reflect
24 contemporary understanding of the importance of
25 spatial distribution of habitat and the natural hy-

1 drology of aquatic ecosystems, and shall fully miti-
2 gate the adverse hydrologic impacts of projects.

3 “(5) RECOMMENDATION OF PROJECTS.—The
4 Secretary shall not recommend a water resources
5 project alternative or choose a project alternative in
6 any final record of decision, environmental impact
7 statement, or environmental assessment completed
8 after the date of enactment of this paragraph unless
9 the Secretary determines that the mitigation plan
10 for the alternative has the greatest probability of
11 cost-effectively and successfully mitigating the ad-
12 verse impacts of the project on aquatic resources
13 and fish and wildlife.

14 “(6) COMPLETION OF MITIGATION BEFORE
15 CONSTRUCTION OF NEW PROJECTS.—The Secretary
16 shall complete all planned mitigation in a particular
17 watershed before constructing any new water re-
18 sources project in that watershed.”.

19 **SEC. 202. CONCURRENT MITIGATION.**

20 Section 906(a)(1) of the Water Resources Develop-
21 ment Act of 1986 (33 U.S.C. 2283(a)(1)) is amended by
22 adding at the end the following: “To ensure concurrent
23 mitigation, the Secretary shall complete 50 percent of re-
24 quired mitigation before beginning project construction

1 and shall use a proportionate amount of project construc-
2 tion funding to complete the required mitigation.”.

3 **SEC. 203. MITIGATION TRACKING SYSTEM.**

4 (a) IN GENERAL.—Not later than 6 months after the
5 date of enactment of this Act, the Secretary shall establish
6 a record-keeping system for each water resources project
7 carried out by the Secretary to track the following infor-
8 mation:

9 (1) The amount and type of wetlands and other
10 habitat types impacted by the project, including
11 habitat types impacted by operation and mainte-
12 nance of the project.

13 (2) The amount and type of mitigation required
14 for the project, including mitigation required for op-
15 eration and maintenance of the project.

16 (3) The amount and type of mitigation that has
17 been completed for the project, including mitigation
18 completed for operation and maintenance of the
19 project.

20 (4) Wetland losses permitted under section 404
21 of the Federal Water Pollution Control Act (33
22 U.S.C. 1344).

23 (b) REQUIRED INFORMATION AND ORGANIZATION.—
24 The record-keeping system shall include information for
25 past, present, and future impacts and mitigation and shall

1 be organized by watershed, project, permit application,
2 and zip code.

3 (c) AVAILABILITY OF INFORMATION.—The Secretary
4 shall make information contained in the record-keeping
5 system available to the public on the Internet.